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ATTORNEY GENERAL OF TEXAS

November 13, 2017

Ms. Dannet Bock-Barnes
Assistant General Counsel
Texas Department of Criminal Justice
P.O. Box 4004
Huntsville, Texas 77342-4004

OR2017-25942

Dear Ms. Bock-Barnes:

You ask whether certain information is subject to required public disclosure under the Public Information Act (the "Act"), chapter 552 of the Government Code. Your request was assigned ID# 684011 (TDCJ # ZT0061).

The Texas Department of Criminal Justice (the "department") received a request for information pertaining to a specified incident involving the requestor. You claim the submitted information is excepted from disclosure under sections 552.103, 552.108, and 552.134 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

Initially, we note some of the submitted information is subject to section 552.022 of the Government Code. Section 552.022(a) provides, in relevant part:

(a) [T]he following categories of information are public information and not excepted from required disclosure unless made confidential under this chapter or other law:

...

(3) information in an account, voucher, or contract relating to the receipt or expenditure of public or other funds by a governmental body[.]

Gov't Code § 52.022(a)(3). The submitted information contains information in an account, contract, or voucher relating to the receipt or expenditure of funds by the department that is subject to section 552.022(a)(3). This information must be released unless it is made confidential under the Act or other law. *See id.* § 52.022(a)(3). The department seeks to withhold the information subject to section 552.022(a)(3) under sections 552.103 and 552.108 of the Government Code. However, sections 552.103 and 552.108 are discretionary in nature and do not make information confidential under the Act. *See Dallas Area Rapid Transit v. Dallas Morning News*, S.W.3d 69, 475-76 (Tex. App.—Dallas 1999, no pet.) (governmental body may waive Gov't Code § 52.103); *see also* Open Records Decision Nos. 177 at 3 (1977) (statutory predecessor to Gov't Code § 52.108 subject to waiver), 665 at 2 n.5 (2000) (discretionary exceptions generally). Therefore, the department may not withhold the information subject to section 552.022, which we have marked, under section 552.103 or section 552.108 of the Government Code. However, because sections 552.134 and 552.136 of the Government Code make information confidential under the Act, we will consider the applicability of these sections to the information at issue.¹ We will also consider the department's argument under sections 552.103 and 552.108 for the information not subject to section 552.022.

Section 552.108(a) of the Government Code excepts from disclosure “[i]nformation held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime . . . if: (1) release of the information would interfere with the detection, investigation, or prosecution of crime.” Gov't Code § 552.108(a)(1). Generally, a governmental body claiming section 552.108(a)(1) must explain how and why the release of the requested information would interfere with law enforcement. *See id.* §§ 552.108(a)(1), .301(e)(1)(A); *see also Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977). We note section 552.108 is generally not applicable to records of an internal administrative investigation that is purely administrative in nature and does not involve the investigation or prosecution of crime. *See City of Fort Worth v. Cornyn*, 86 S.W.3d 320 (Tex. App.—Austin 2002, no pet.); *Morales v. Ellen*, 840 S.W.2d 519, 525-26 (Tex. App.—El Paso 1992, writ denied) (statutory predecessor to section 552.108 not applicable to internal investigation that did not result in criminal investigation or prosecution). You state the submitted information not subject to section 552.022 of the Government Code relates to an ongoing criminal investigation, and release of that information would interfere with the investigation and prosecution of the case. Based upon this representation, we conclude the release of the submitted information would interfere with the detection, investigation, or prosecution of crime. *See Houston Chronicle Publ'g Co. v. City of Houston*, 531 S.W.2d 177 (Tex. Civ. App.—Houston [14th Dist.] 1975) (court delineates law enforcement interests

¹The Office of the Attorney General will raise a mandatory exception on behalf of a governmental body, but ordinarily will not raise other exceptions. *See* Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).

that are present in active cases), *writ ref'd n.r.e. per curiam*, 536 S.W.2d 559 (Tex. 1976). Thus, section 552.108(a)(1) is applicable to the submitted information.

However, section 552.108 does not except from disclosure “basic information about an arrested person, an arrest, or a crime.” Gov’t Code § 552.108(c). Section 552.108(c) refers to the basic information held to be public in *Houston Chronicle*. See 531 S.W.2d at 186-187; see also Open Records Decision No. 127 (1976) (summarizing types of information considered to be basic information). Accordingly, with the exception of basic information, which must be released, the department may withhold the submitted information not subject to section 552.022 under section 552.108(a)(1) of the Government Code.²

Section 552.134 of the Government Code relates to inmates of the department and provides:

Except as provided by Subsection (b) or by Section 552.029 [of the Government Code], information obtained or maintained by the [department] is excepted from [required public disclosure] if it is information about an inmate who is confined in a facility operated by or under a contract with the department.

Gov’t Code § 552.134(a). Although you assert the information subject to section 552.022 is confidential under section 552.134, upon review, we find the information at issue pertains to an investigation into the requestor’s conduct during his employment with the department. Such information does not constitute “information about an inmate” for purposes of section 552.134, and the information subject to section 552.022 may not be withheld on that basis.

Section 552.136 of the Government Code provides, “Notwithstanding any other provision of [the Act], a credit card, debit card, charge card, or access device number that is collected, assembled, or maintained by or for a governmental body is confidential.” *Id.* § 552.136(b); see *id.* § 52.136(a) (defining “access device”). Accordingly, the department must withhold the partial credit card numbers we marked under section 52.136 of the Government Code.

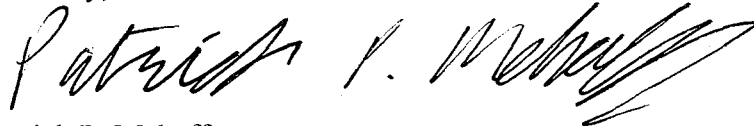
In summary, the department must release the information subject to section 552.022 of the Government Code, which we marked. With the exception of basic information, which must be released, the department may withhold the information not subject to section 552.022 of the Government Code under section 552.108(a)(1) of the Government Code. In releasing the information subject to section 552.022, the department must withhold the partial credit card numbers we marked under section 52.136 of the Government Code.

²As our ruling is dispositive, we do not address the remaining arguments against disclosure, except to note basic information is generally not excepted from disclosure under section 552.103 or section 552.134 of the Government Code. See Open Records Decision No. 597 (1991); see also Gov’t Code § 552.029(8) (basic information regarding an alleged crime involving an inmate in custody is not excepted under section 552.134)

This letter ruling is limited to the particular information at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other information or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For more information concerning those rights and responsibilities, please visit our website at http://www.texasattorneygeneral.gov/open/orl_ruling_info.shtml, or call the Office of the Attorney General's Open Government Hotline, toll free, at (877) 673-6839. Questions concerning the allowable charges for providing public information under the Act may be directed to the Office of the Attorney General, toll free, at (888) 672-6787.

Sincerely,



Patrick P. Mehaffy
Attorney
Open Records Division

PPM/eb

Ref: ID# 684011

Enc. Submitted documents

c: Requestor
(w/o enclosures)